

No. 22-13051-HH

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

IN RE: BLUE CROSS BLUE SHIELD ANTITRUST LITIGATION MDL 2406.

On Appeal from the United States District Court
for the Northern District of Alabama, Southern Division,
No. 2:13-cv-20000-RDP

**AMICUS CURIAE BRIEF OF THE STATE OF OKLAHOMA INSURANCE
DEPARTMENT, THE ARKANSAS INSURANCE DEPARTMENT, THE
CALIFORNIA DEPARTMENT OF INSURANCE, THE GEORGIA OFFICE
OF INSURANCE AND SAFETY FIRE COMMISSIONER, THE IDAHO
DEPARTMENT OF INSURANCE, THE MAINE BUREAU OF
INSURANCE, THE NEVADA DIVISION OF INSURANCE, THE
VERMONT DEPARTMENT OF FINANCIAL REGULATION, THE
WASHINGTON OFFICE OF THE INSURANCE COMMISSIONER, AND
THE WISCONSIN OFFICE OF THE COMMISSIONER OF INSURANCE
IN SUPPORT OF REVERSAL**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11TH CIRCUIT RULE 26.1, the undersigned counsel certifies that the following is a complete list of the trial judge and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case on appeal:

1. 450 Ventures, LLC, Affiliate of Defendants-Appellees
2. A. Duie Pyle, Inc., Plaintiff-Appellee
3. Accenda Health Company, Affiliate of Defendants-Appellees
4. Access Health, Inc., Affiliate of Defendants-Appellees
5. Accident Fund Holding, Inc., Affiliate of Defendants-Appellees
6. ACE, including ACE American Insurance Company and Illinois Union Insurance Company, Insurer of Defendants-Appellees
7. Adams & Reese, LLP, Counsel for Defendants-Appellees
8. Adamson, Virginia, Counsel for Interested Party-Appellant
9. Adcox, Rachel, Counsel for Defendants-Appellees
10. Advance Insurance Company of Kansas, Affiliate of Defendants-Appellees
11. Advanced Health Information Network, LLC, Affiliate of Defendants-Appellees

12. Aero Jet Intermediate Holdings, Inc., which is wholly owned by Aero Medical International, Inc., Parent to Plaintiffs-Appellees
13. Ahrens, Ellen M., Counsel for Plaintiffs-Appellees
14. American International Group Inc. (AIG) (including Lexington Insurance Company, National Union Insurance Company, and Illinois National Insurance Co.), Insurer of Defendants-Appellees
15. Alabama Industries Financial Corporation, Affiliate of Defendants-Appellees
16. AlaHealth, Inc., Affiliate of Defendants-Appellees
17. Alexander, Laura, Counsel for Plaintiffs-Appellees
18. Allie, Renee E., Plaintiff-Appellee
19. Allied World Assurance Company, f/k/a Darwin National and Darwin Select, Insurer of Defendants-Appellees
20. Ambrecht Jackson LLP, Counsel for Defendants-Appellees
21. America's 1st Choice of South Carolina, Inc., Subsidiary of Defendants-Appellees
22. American Electric Motor Services Inc., Plaintiff-Appellee
23. AMERIGROUP Community Care of New Mexico, Inc., Subsidiary of Defendants-Appellees
24. AMERIGROUP Corporation, Subsidiary of Defendants-Appellees

25. Amerigroup District of Columbia, Inc., Subsidiary of Defendants-Appellees
26. Amerigroup Insurance Company, Subsidiary of Defendants-Appellees
27. AMERIGROUP Iowa, Inc., Subsidiary of Defendants-Appellees
28. Amerigroup Kansas, Inc., Subsidiary of Defendants-Appellees
29. AMERIGROUP Maryland, Inc., Subsidiary of Defendants-Appellees
30. AMERIGROUP Ohio, Inc., Subsidiary of Defendants-Appellees
31. AMERIGROUP New Jersey, Inc., Subsidiary of Defendants-Appellees
32. AMERIGROUP Tennessee, Inc., Subsidiary of Defendants-Appellees
33. AMERIGROUP Texas, Inc., Subsidiary of Defendants-Appellees
34. AMERIGROUP Washington, Inc., Subsidiary of Defendants-Appellees
35. AmeriHealth, Inc., Parent to Defendants-Appellees
36. AMGP Georgia Managed Care Company, Inc., Subsidiary of Defendants-Appellees
37. Anthem Blue Cross (Blue Cross of California), Defendant-Appellee

38. Anthem Blue Cross and Blue Shield of Connecticut, Defendant-Appellee
39. Anthem Blue Cross and Blue Shield of Indiana, Defendant-Appellee
40. Anthem Blue Cross and Blue Shield of Missouri, Defendant-Appellee
41. Anthem Blue Cross and Blue Shield of New Hampshire, Defendant-Appellee
42. Anthem Blue Cross and Blue Shield of Virginia, Inc., Defendant-Appellee
43. Anthem Blue Cross Life and Health Insurance Company, Defendant-Appellee
44. Anthem Financial, Inc., Affiliate of Defendants-Appellees
45. Anthem Health Insurance Company of Nevada, Subsidiary of Defendants-Appellees
46. Anthem Health Plans of Kentucky, Inc., Defendant-Appellee
47. Anthem Health Plans of Maine, Defendant-Appellee
48. Anthem Health Plans of Maine, Inc., Defendant-Appellee
49. Anthem Health Plans of New Hampshire, Inc. (Anthem Blue Cross and Blue Shield of New Hampshire), Defendant-Appellee
50. Anthem Health Plans of Virginia, Inc. (Anthem Blue Cross and Blue Shield of Virginia Inc.), Defendant-Appellee

51. Anthem Health Plans, Inc. (Anthem Blue Cross and Blue Shield of Connecticut), Defendant-Appellee
52. Anthem Holding Corporation, Defendant-Appellee
53. Anthem Insurance Companies, Inc. (Anthem Blue Cross and Blue Shield of Indiana), Defendant-Appellee
54. Anthem, Inc. (ELV), Defendant-Appellee
55. Anthem, Inc. (Anthem Health Plans of Virginia, Inc.), Defendant-Appellee
56. Anthem, Inc. (Parent to Anthem Insurance Companies, Inc.), Defendant-Appellee
57. Anthem, Inc. (Parent to Community Insurance Company), Defendant- Appellee
58. Anthem, Inc., f/k/a Wellpoint, Inc. d/b/a Anthem Blue Cross Life and Health Insurance Company, Blue Cross of California, Blue Cross of Southern California, Blue Cross of Northern California, Rocky Mountain Hospital and Medical Service Inc. d/b/a Anthem Blue Cross Blue Shield of Colorado and Anthem Blue Cross Blue Shield of Nevada, Anthem Blue Cross Blue Shield of Connecticut, Anthem Blue Cross Blue Shield of Georgia, Anthem Blue Cross Blue Shield of Indiana, Anthem Blue Cross Blue Shield of Kentucky, Anthem

Blue Cross Blue Shield of Maine, Anthem Blue Cross Blue Shield of Missouri, RightCHOICE Managed Care, Inc., HMO Missouri Inc., Anthem Health Plans of New Hampshire as Anthem Blue Cross Blue Shield of New Hampshire, Empire HealthChoice Assurance, Inc. as Empire Blue Cross Blue Shield, Community Insurance Company as Anthem Blue Cross Blue Shield of Ohio, Anthem Blue Cross and Blue Shield of Virginia, Anthem Blue Cross Blue Shield of Wisconsin, Defendant-Appellee

59. Anthem Kentucky Managed Care Plan, Inc., Subsidiary of Defendants- Appellees

60. Anthem Life & Disability Insurance Company, Affiliate of Defendants- Appellees

61. Anthem Life Insurance Company, Defendant-Appellee

62. Anthem Partnership Holding Company, LLC, Subsidiary of Defendants-Appellees

63. Anthem Southeast, Inc., Subsidiary of Defendants-Appellees

64. Anthem Workers' Compensation, LLC, Subsidiary of Defendants- Appellees

65. APC Passe, LLC, Affiliate of Defendants-Appellees

66. Arch Insurance Company (ACGL), Insurer of Defendants-Appellees

67. Argo Re (ARGO), Insurer of Defendants-Appellees
68. Arizmendi, Sylmarie, Counsel for Defendants-Appellees
69. Arkansas Blue Cross and Blue Shield, Defendant-Appellee
70. Armbrecht Jackson LLP, Counsel for Defendants-Appellees
71. ASC Benefit Services, LLC, Affiliate of Defendants-Appellees
72. Aschenbrenner, Juanita, Plaintiff-Appellee
73. Aschenbrenner, Tom, Plaintiff-Appellee
74. Associated Group, Inc., Subsidiary of Defendants-Appellees
75. Asuris Northwest Health, Subsidiary of Defendants-Appellees
76. ATH Holding Company, LLC, Subsidiary of Defendants-Appellees
77. Ausman Law Firm, Counsel for Plaintiffs-Appellees
78. Ausman, Jason, Counsel for Plaintiffs-Appellees
79. Avalon Insurance Company, Affiliate of Defendants-Appellees
80. Avantgarde Aviation, Inc., Plaintiff-Appellee
81. Aware Integrated, Inc., Parent to Defendants-Appellees
82. Axinn, Veltrop & Harkrider, LLP, Counsel for Defendants-Appellees
83. Bailey & Glasser, LLP, Counsel for Plaintiffs-Appellees
84. Bailey, Arthur, Counsel for Plaintiffs-Appellees
85. Baird, Lisa M., Counsel for Defendants-Appellees
86. Balch & Bingham LLP, Counsel for Defendants-Appellees

87. Ball & Scott Law Offices, Counsel for Plaintiffs-Appellees
88. Ball, W. Gordon, Counsel for Plaintiffs-Appellees
89. Balmori, Daniel, Counsel for Defendants-Appellees
90. Barnes, Benjamin L., Counsel for Plaintiffs-Appellees
91. Barnett, Tyler J., Counsel for Plaintiffs-Appellees
92. Barr, Sternberg, Moss, Lawrence, Silver & Munson, P.C., Plaintiff-Appellee
93. Barstow, Erik, Plaintiff-Appellee
94. Bartlett, Inc. d/b/a Energy Savers, Plaintiff-Appellee
95. Bartony & Hare, Counsel for Plaintiffs-Appellees
96. Battin, Timothy D., Counsel for Plaintiffs-Appellees
97. Baudin, Stanley P., Counsel for Plaintiffs-Appellees
98. BCBSM, Inc. d/b/a Blue Cross Blue Shield of Minnesota, Defendant-Appellee
99. BCS Insurance Company, Insurer of Defendants-Appellees
100. Beard, Braden, Counsel for Plaintiffs-Appellees
101. Beard, Braden, Counsel for Plaintiffs-Appellees
102. Beck & Amsden PLLC, Counsel for Plaintiffs-Appellees
103. Beck, Monte D., Counsel for Plaintiffs-Appellees
104. Behenna, David G., Interested-Party-Appellant (Pro Se)

105. Belin, Eric R.G., Counsel for Plaintiffs-Appellees
106. Belt Law Firm, PC, Counsel for Plaintiffs-Appellees
107. Belt, Keith T., Counsel for Plaintiffs-Appellees
108. Belzer, Betsy Jane, Plaintiff-Appellee
109. BeneVive, Inc., Affiliate of Defendants-Appellees
110. Berger & Montague, P.C., Counsel for Plaintiffs-Appellees
111. Bernick, Justin, Counsel for Defendants-Appellees
112. Bhuta, Monika, Plaintiff-Appellee
113. Bishop, Martin J., Counsel for Defendants-Appellees
114. Bisio, Peter, Counsel for Defendants-Appellees
115. Blackrock, Inc., 10% Owner of a Plaintiff-Appellee
116. Blanchfield, Garrett, Counsel for Plaintiffs-Appellees
117. Bloomberg, Edward S., Counsel for Defendants-Appellees
118. Blue Care Network of Michigan, Affiliate of Defendants-Appellees
119. Blue Cross and Blue Shield of Alabama, Defendant-Appellee
120. Blue Cross and Blue Shield of Arizona, Defendant-Appellee
121. Blue Cross and Blue Shield of Florida, Defendant-Appellee
122. Blue Cross and Blue Shield of Florida, Inc., Defendant-Appellee
123. Blue Cross and Blue Shield of Florida, Inc. d/b/a Florida Blue,
Defendant-Appellee

124. Blue Cross and Blue Shield of Georgia, Defendant-Appellee
125. Blue Cross and Blue Shield of Georgia, Inc., Defendant-Appellee
126. Blue Cross and Blue Shield of Illinois, Affiliate of Defendants-
127. Blue Cross and Blue Shield of Kansas, Defendant-Appellee
128. Blue Cross and Blue Shield of Kansas City, Defendant-Appellee
129. Blue Cross and Blue Shield of Kansas Foundation, Affiliate of Defendants-Appellees
130. Blue Cross and Blue Shield of Kansas, Inc., Defendant-Appellee
131. Blue Cross and Blue Shield of Louisiana, Defendant-Appellee
132. Blue Cross and Blue Shield of Massachusetts, Defendant-Appellee
133. Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc., Affiliate of Defendants-Appellees
134. Blue Cross and Blue Shield of Massachusetts, Inc., Defendant-Appellee
135. Blue Cross and Blue Shield of Michigan, Defendant-Appellee
136. Blue Cross and Blue Shield of Minnesota, Defendant-Appellee
137. Blue Cross and Blue Shield of Mississippi, Defendant-Appellee
138. Blue Cross and Blue Shield of Montana, Affiliate of Defendants-Appellees
139. Blue Cross and Blue Shield of Nebraska, Defendant-Appellee

140. Blue Cross and Blue Shield of New Mexico, Affiliate of Defendants- Appellees
141. Blue Cross and Blue Shield of North Carolina, Defendant-Appellee
142. Blue Cross and Blue Shield of North Carolina, Inc., Defendant- Appellee
143. Blue Cross and Blue Shield of North Dakota, Defendant-Appellee
144. Blue Cross and Blue Shield of Oklahoma, Affiliate of Defendants- Appellees
145. Blue Cross and Blue Shield of Rhode Island, Defendant-Appellee
146. Blue Cross and Blue Shield of South Carolina, Defendant-Appellee
147. Blue Cross and Blue Shield of Tennessee, Defendant-Appellee
148. Blue Cross and Blue Shield of Tennessee, Inc., Defendant-Appellee
149. Blue Cross and Blue Shield of Texas, Affiliate of Defendants- Appellees
150. Blue Cross and Blue Shield of Vermont, Defendant-Appellee
151. Blue Cross and Blue Shield of Wyoming, Defendant-Appellee
152. Blue Cross Blue Shield Association, Defendant-Appellee
153. Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.,
Defendant- Appellee
154. Blue Cross Blue Shield of Alabama, Defendant-Appellee

155. Blue Cross Blue Shield of Arizona, Defendant-Appellee
156. Blue Cross Blue Shield of Florida, Defendant-Appellee
157. Blue Cross Blue Shield of Massachusetts, Defendant-Appellee
158. Blue Cross Blue Shield of Michigan, Defendant-Appellee
159. Blue Cross Blue Shield of Michigan Mutual Insurance Company,
Defendant-Appellee
160. Blue Cross Blue Shield of Minnesota, Defendant-Appellee
161. Blue Cross Blue Shield of Mississippi, a Mutual Insurance
Company, Defendant-Appellee
162. Blue Cross Blue Shield of Montana, Defendant-Appellee
163. Blue Cross Blue Shield of Nebraska, Defendant-Appellee
164. Blue Cross Blue Shield of North Carolina, Defendant-Appellee
165. Blue Cross Blue Shield of North Dakota, Defendant-Appellee
166. Blue Cross Blue Shield of Northeastern Pennsylvania, Defendant-
Appellee
167. Blue Cross Blue Shield of Rhode Island, Defendant-Appellee
168. Blue Cross Blue Shield of South Carolina, Defendant-Appellee
169. Blue Cross Blue Shield of Tennessee, Defendant-Appellee
170. Blue Cross Blue Shield of Vermont, Defendant-Appellee

171. Blue Cross Blue Shield of Wisconsin (Anthem Blue Cross Blue Shield of Wisconsin), Defendant-Appellee
172. Blue Cross Blue Shield of Wyoming, Defendant-Appellee
173. Blue Cross Complete of Michigan, LLC, Affiliate of Defendants-Appellees
174. Blue Cross of California Partnership Plan, Inc., Defendant-Appellee
175. Blue Cross of Idaho Care Plus, Inc., Affiliate of Defendants-Appellees
176. Blue Cross of Idaho Health Service, Inc., Defendant-Appellee
177. Blue Cross of Northeastern Pennsylvania - Wilkes-Barre, Defendant- Appellee
178. BlueChoice HealthPlan of South Carolina, Inc., Affiliate of Defendants- Appellees
179. BlueCross and BlueShield of North Carolina Senior Health, Affiliate of Defendants-Appellees
180. BlueCross BlueShield Kansas Solutions, Affiliate of Defendants- Appellees
181. Blue Shield of California, Defendant-Appellee
182. Blue Shield of California Life & Health Insurance Company, Subsidiary of Defendants-Appellees

183. BMH, LLC, Affiliate of Defendants-Appellees
184. Bodman PLC, Counsel for Defendants-Appellees
185. Boies, Alexander McInnis, Counsel for Plaintiffs-Appellees
186. Boies, David, Counsel for Plaintiffs-Appellees
187. Boies, Schiller & Flexner LLP, Counsel for Plaintiffs-Appellees
188. Bojedla, Swathi, Counsel for Plaintiffs-Appellees
189. Bondurant Mixson & Elmore, LLP, Counsel for Interested Party-Appellant
190. Boozer Law Firm, LLC, Counsel for Plaintiffs-Appellees
191. Borgeest, Wayne, Counsel for Insurer
192. Bowling, Jeffrey L., Counsel for Plaintiffs-Appellees
193. Boyd, Matthew Allan Plaintiff-Appellee
194. Bradberry, Christy, Plaintiff-Appellee
195. Bradberry, Kevin, Plaintiff-Appellee
196. Bradley Arant Boult Cummings, LLP, Counsel for Interested Party-Appellant
197. BridgeSpan Health Company, Subsidiary of Defendants-Appellees
198. Briggs, John, Counsel for Defendants-Appellees
199. Brijbasi, Vijay G., Counsel for Defendants-Appellees
200. Bronster Hoshibata, Counsel for Plaintiffs-Appellees

201. Bronster, Margery S., Counsel for Plaintiffs-Appellees
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203. Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, Counsel for Defendants-Appellees
204. Bronster, Fujichaka, Robbins, ALC, Counsel for Plaintiffs-Appellees
205. Bruner, Robert "Bo" P., Counsel for Plaintiffs-Appellees
206. Brunini, Grantham, Grower & Hewes, PLLC, Counsel for Defendants- Appellees
207. Buchanan, Virginia, Counsel for Plaintiffs-Appellees
208. Burkhalter, Carl S., Counsel for Defendants-Appellees
209. Burns Charest LLP, Counsel for Plaintiffs-Appellees
210. Burns, Eric, Counsel for Plaintiffs-Appellees
211. Burns, Warren T., Counsel for Plaintiffs-Appellees
212. Burr & Forman LLP, Counsel for Insurer
213. Bustamante, Travis A., Counsel for Defendants-Appellees
214. Cafferty Clobes Meriwether & Sprengel LLP, Counsel for Plaintiffs-Appellees
215. Cafferty, Patrick, Counsel for Plaintiffs-Appellees

216. Cahaba Government Benefit Administrators, LLC, Affiliate of Defendants-Appellees
217. Cahaba Medical Care, Defendant-Appellee
218. Cahaba Safeguard Administrators, LLC, Affiliate of Defendants-Appellees
219. Caliendo, Charles T., Counsel for Plaintiffs-Appellees
220. California Physicians' Service, Defendant-Appellee
221. California Physicians' Service, d/b/a Blue Shield of California, Defendant-Appellee
222. Callister, Joshua, Counsel for Plaintiffs-Appellees
223. Cambia Health Solutions, Inc., f/d/b/a Regence Blue Shield of Idaho, Regence Blue Cross Blue Shield of Oregon, Regence Blue Cross Blue Shield of Utah, Regence Blue Shield of Washington, Defendant- Appellee
224. Campbell Partners, Counsel for Defendants-Appellees
225. Campbell, A. Todd, Counsel for Defendants-Appellees
226. Campbell, Andrew P., Counsel for Defendants-Appellees
227. Capital Administrative Services, Inc., Affiliate of Defendants-Appellees

228. Capital Advantage Assurance Company, Affiliate of Defendants-Appellees
229. Capital Advantage Insurance Company, Affiliate of Defendants-Appellees
230. Capital BlueCross, Defendant-Appellee
231. Capital Health Plan, Inc., Affiliate of Defendants-Appellees
232. CareFirst Blue Cross and Blue Shield of Maryland, Defendant-Appellee
233. CareFirst BlueChoice, Inc., Defendant-Appellee
234. CareFirst BlueCross BlueShield, d/b/a Group Hospitalization and Medical Services and CareFirst Blue Cross Blue Shield of Maryland, Defendant-Appellee
235. CareFirst Holdings, Inc., Parent to Defendants-Appellees
236. CareFirst of Maryland, Inc., Defendant-Appellee
237. CareFirst of Maryland, Inc. d/b/a CareFirst BlueCross BlueShield, Defendant-Appellee
238. CareFirst, Inc., Defendant-Appellee
239. CareMore Health Plan, Subsidiary of Defendants-Appellees
240. CareMore Health Plan of Arizona, Inc., Subsidiary of Defendants-Appellees

241. CareMore Health Plan of Nevada, Subsidiary of Defendants-Appellees
242. CareMore Health Plan of Texas, Inc., Subsidiary of Defendants-Appellees
243. CareMore Health System, Subsidiary of Defendants-Appellees
244. Caring for Montanans, Inc., f/k/a Blue Cross and Blue Shield of Montana, Inc., Defendant-Appellee
245. Caring for Montanans, Inc., Defendant-Appellee
246. Caring Foundation, Affiliate of Defendants-Appellees
247. Carlson Lynch, Ltd., Counsel for Plaintiffs-Appellees
248. Carlson Lynch Sweet Kilpela & Carpenter, LLP, Counsel for Plaintiffs- Appellees
249. Carr, James P., Counsel for Plaintiffs-Appellees
250. Casa Blanca, LLC, Plaintiff-Appellee
251. Casey, Justine, Counsel for Insurer
252. Catamount Insurance Services, Inc., Affiliate of Defendants-Appellees
253. Cavanaugh, Patrick K., Counsel for Plaintiffs-Appellees
254. CB Roofing LLC, Plaintiff-Appellee
255. CCHA, LLC, Subsidiary of Defendants-Appellees

256. Cerulean Companies, Inc., Subsidiary of Defendants-Appellees
257. Cerven, Keith O., Plaintiff-Appellee
258. Cerven, Teresa, M., Plaintiff-Appellee
259. CGS Administrators, LLC, Affiliate of Defendants-Appellees
260. Chadrow & Associates, Counsel for Plaintiffs-Appellees
261. Chapman, Lewis & Swan, PLLC, Counsel for Plaintiffs-Appellees
262. Chapman, Ralph E., Counsel for Plaintiffs-Appellees
263. Charles M. Thompson PC, Counsel for Plaintiffs-Appellees
264. Charnes, Adam H., Counsel for Defendants-Appellees
265. Chavez, Kathleen, Counsel for Plaintiffs-Appellees
266. Chesler, Evan, Counsel for Defendants-Appellees
267. Childress, Jennifer D., Plaintiff-Appellee
268. Chubb (CB) (including Federal Insurance and Executive Risk),
Insurer of Defendants-Appellees
269. Cihlar, Nate, Counsel for Plaintiffs-Appellees
270. Claim Management Services, Inc., Subsidiary of Defendants-
Appellees
271. Clark, Anna Mercado, Counsel for Defendants-Appellees
272. Clement, Paul D., Counsel for Defendants-Appellees
273. Clobes, Bryan, Counsel for Plaintiffs-Appellees

274. Cobalt Benefits Group, LLC, Affiliate of Defendants-Appellees
275. COBX Inc., Affiliate of Defendants-Appellees
276. Cochran, George W., Counsel for Interested Party-Appellant
277. Cochran, Jennifer, Interested Party-Appellant (Pro Se)
278. Coffey Burlington, Counsel for Defendants-Appellees
279. Coffin, Christopher, Counsel for Plaintiffs-Appellees
280. Cohen Milstein Sellers & Toll PLLC, Counsel for Plaintiffs-Appellees
281. Cohen, Lucile H., Counsel for Defendants-Appellees
282. Colatriano, Vincent J., Counsel for Plaintiffs-Appellees
283. Comet Capital LLC, Plaintiff-Appellee
284. Commencement Bay Risk Management Insurance Company, Subsidiary of Defendants-Appellees
285. Community Care Health Plan of Louisiana, Inc. d/b/a Healthy Blue, Subsidiary of Defendants-Appellees
286. Community Care Health Plan of Nevada, Inc., Subsidiary of Defendants-Appellees
287. Community Insurance Company, Defendant-Appellee
288. Community Insurance Company as Anthem Blue Cross Blue Shield of Ohio, Defendant-Appellee

289. Companion Benefit Alternatives, Inc., Affiliate of Defendants-Appellees
290. Companion Data Services, LLC, Affiliate of Defendants-Appellees
291. Companion Life Insurance Company, Affiliate of Defendants-Appellees
292. Companion Life Insurance Company of California, Affiliate of Defendants-Appellees
293. Comparato, Paige, Counsel for Defendants-Appellees
294. CompCare Health Services Insurance Corporation, Affiliate of Defendants-Appellees
295. Comprehensive Benefits Administrators, Inc., Affiliate of Defendants- Appellees
296. Concepcion Martinez & Bellido, Counsel for Defendants-Appellees
297. Concepcion, Esq., Carlos F., Counsel for Defendants-Appellees)
298. Connally, III, N. Thomas, Counsel for Defendants-Appellees
299. Conner, Timothy J., Counsel for Defendants-Appellees
300. Connor, Glen M., Counsel for Plaintiffs-Appellees
301. Conrad Watson Air Conditioning, Inc., Plaintiff-Appellee
302. Consolidated Benefits, Inc., Affiliate of Defendants-Appellees

303. Consumer Financial Education Foundation of America, Inc.,
Plaintiff- Appellee
304. Conway, D.C., Jerry L., Plaintiff-Appellee
305. Coolidge, Melinda, Counsel for Plaintiffs-Appellees
306. Cooper & Kirk, PLLC, Counsel for Plaintiffs-Appellees
307. Cooper, Charles J., Counsel for Plaintiffs-Appellees
308. Cooper, Davis, Counsel for Plaintiffs-Appellees
309. Corporate Benefits Services, Inc., Affiliate of Defendants-Appellees
310. Cory Watson Crowder & DeGaris, P.C., Counsel for Plaintiffs-
Appellees
311. Cory Watson, P.C., Counsel for Plaintiffs-Appellees
312. Costello, Honor R., Counsel for Defendants-Appellees
313. Cottrell, P.C., Christa C., Counsel for Defendants-Appellees
314. Coulson, David A., Counsel for Defendants-Appellees
315. Cowan, R. Christopher, Counsel for Plaintiffs-Appellees
316. Cowan Law Firm, Counsel for Plaintiffs-Appellees
317. Cozen O'Connor, Counsel for Plaintiffs-Appellees
318. Craker, Aaron, Interested Party-Appellant (Pro Se)
319. Cramer, Eric L., Counsel for Plaintiffs-Appellees
320. Cravath Swaine & Moore, Counsel for Defendants-Appellees

321. Crispin, R. Randal, Counsel for Insurer
322. Crossroads Acquisition Corp., Subsidiary of Defendants-Appellees
323. Crowe & Dunlevy, Counsel for Defendants-Appellees
324. Crowell & Moring LLP, Counsel for Defendants-Appellees
325. Cude, Donna Smith, Counsel for Plaintiffs-Appellees
326. Cunningham, Mark A., Counsel for Defendants-Appellees
327. Curtis, Frank, Plaintiff-Appellee
328. Cylkowski, Sarah L., Counsel for Defendants-Appellees
329. Dampier Law Group, P.C., Counsel for Plaintiffs-Appellees
330. Dampier, M. Stephen, Counsel for Plaintiffs-Appellees
331. Davidson, Jennifer Ray, Plaintiff-Appellee
332. Davis, Greg, Counsel for Plaintiffs-Appellees
333. Deal, Cooper, & Holton, LLP, Counsel for Plaintiffs-Appellees
334. DeCare Dental, LLC, Subsidiary of Defendants-Appellees
335. DeCare Dental Health International, LLC, Subsidiary of Defendants-Appellees
336. DeCare Dental Insurance Ireland, Ltd., Subsidiary of Defendants-Appellees
337. DeCare Dental Networks, LLC, Subsidiary of Defendants-Appellees
338. DeGaris, Annesley H., Counsel for Plaintiffs-Appellees

339. Del Sole Cavanaugh Stroyd, LLC, Counsel for Plaintiffs-Appellees
340. Del Sole, Steven J., Counsel for Plaintiffs-Appellees
341. Dellaccio, Douglas, Counsel for Plaintiffs-Appellees
342. DeMasi, Karin, Counsel for Defendants-Appellees
343. Dental Management Administrators, Inc., Affiliate of Defendants-Appellees
344. Designated Agent Company, Inc., Subsidiary of Defendants-Appellees
345. Dickinson Wright, PLLC, Counsel for Defendants-Appellees
346. Dickinson, Mackaman, Tyler & Hagen, P.C., Counsel for Defendants- Appellees
347. Diddle, Samuel A., Counsel for Defendants-Appellees
348. Doherty, Ronan, Counsel for Interested Party-Appellant
349. Dominick Feld Hyde PC, Counsel for Plaintiffs-Appellants
350. Dominion Dental Services of New Jersey, Inc., Affiliate of Defendants- Appellees
351. Dominion Dental Services USA, Inc., Dominion National, Affiliate of Defendants-Appellees
352. Dominion Dental Services, Inc., d/b/a Dominion National, Affiliate of Defendants-Appellees

353. Dominion Dental USA, Inc., Affiliate of Defendants-Appellees
354. Dominion National Insurance Company of New Jersey, Affiliate of Defendants-Appellees
355. Donaldson Guin LLC, Counsel for Plaintiffs-Appellees
356. Donnell, Sarah J., Counsel for Defendants-Appellees
357. Dorr, Jr., Luther M., Counsel for Defendants-Appellees
358. Draper, Hayward L., Counsel for Defendants-Appellees
359. Dryden, Benjamin R., Counsel for Defendants-Appellees
360. Dyer, Karen, Counsel for Plaintiffs-Appellees
361. EAP Alliance Incorporated, Affiliate of Defendants-Appellees
362. Eberle Berlin, Kading, Turnbow & McKlveen, Chartered, Counsel for Defendants-Appellees
363. EEPA, LLC, Affiliate of Defendants-Appellees
364. Eisler, Robert, Counsel for Plaintiffs-Appellees
365. Empire HealthChoice Assurance, Inc., Defendant-Appellee
366. Empire HealthChoice Assurance, Inc., f/k/a Empire Blue Cross Blue Shield, Defendant-Appellee
367. Empire HealthChoice HMO, Inc., Subsidiary of Defendants-Appellees
368. Employee Services, Inc., Interested Party-Appellant

369. Encore System Professionals, LLC, Affiliate of Defendants-Appellees
370. Endurance Specialty Insurance Ltd., Insurer of Defendants-Appellees
371. Enterprise Law Group, LLP, Counsel for Plaintiffs-Appellees
372. Entrust Administrative Services, Inc., Affiliate of Defendants-Appellees
373. Entrust Agencies, LLC, Affiliate of Defendants-Appellees
374. Entrust Group, Inc., Affiliate of Defendants-Appellees
375. Entrust, LLC, Affiliate of Defendants-Appellees
376. Excellus Blue Cross Blue Shield, Defendant-Appellee
377. Excellus BlueCross BlueShield of New York, Defendant-Appellee
378. Excellus Health Plan, Inc. d/b/a Excellus BlueCrossBlueShield, Defendant-Appellee
379. Excellus Healthcare, Inc., d/b/a Excellus BlueCross BlueShield, Defendant-Appellee
380. Faegre Baker Daniels LLP, Counsel for Defendants-Appellees
381. Feinstein, Richard A., Counsel for Plaintiffs-Appellees
382. Ficaro, James, Counsel for Plaintiffs-Appellees
383. First Administrators, Inc., Defendant-Appellee

384. Fleming, Michael J., Counsel for Plaintiffs-Appellees
385. Florida Combined Life, Affiliate of Defendants-Appellees
386. Florida Health Care Plan, Inc., Affiliate of Defendants-Appellees
387. Freedom Health, Inc., Subsidiary of Defendants-Appellees
388. Foley & Lardner LLP, Counsel for Defendants-Appellees
389. Foote, Mielke, Chavez & O'Neil LLC, Counsel for Plaintiffs-Appellees
390. Foote, Robert M., Counsel for Plaintiffs-Appellees
391. Forbes Law Group, LLC, Counsel for Plaintiffs-Appellees
392. Forbes, Frankie J., Counsel for Plaintiffs-Appellees
393. Forsythe, Debora, Plaintiff-Appellee
394. Forsythe, Tony, Plaintiff-Appellee
395. Fort McClellan Credit Union, Plaintiff-Appellee
396. Fowler, Jeffrey John, Counsel for Defendants-Appellees
397. Franz, Morgan B., Counsel for Defendants-Appellees
398. Free State Growers, Inc., Plaintiffs-Appellees
399. Freedman Boyd Hollander, Counsel for Plaintiffs-Appellees
400. Fronk, Casey R., Counsel for Defendants-Appellees
401. Fujichaku, Rex Y., Counsel for Plaintiffs-Appellees
402. G&S Trailer Repair Inc., Plaintiff-Appellee

403. Galactic Funk Touring, Inc., Plaintiff-Appellee
404. Gankendorff, Edgar D., Counsel for Plaintiffs-Appellees
405. Garner, Jeffrey S., Plaintiff-Appellee
406. Gaston CPA Firm, P.C., Plaintiff-Appellee
407. GC/AAA Fences, Inc., Plaintiff-Appellee
408. Gebremariam, Helam, Counsel for Defendants-Appellees
409. Geneia Holdings LLC, Affiliate of Defendants-Appellees
410. Geneia Insights and Innovations LLC, Affiliate of Defendants-Appellees
411. Geneia LLC, Affiliate of Defendants-Appellees
412. Geneia Management Solutions LLC, Affiliate of Defendants-Appellees
413. Gentle III, Edgar C., Special Master
414. Giarmarco, Mullins & Horton, P.C., Counsel for Plaintiffs-Appellees
415. Giglio, Jr., Joseph C., Counsel for Defendants-Appellees
416. Gilbert, Sarah, Counsel for Defendants-Appellees
417. Gillis, H. Lewis, Counsel for Plaintiffs-Appellees
418. Given, Robert S. W., Counsel for Defendants-Appellees
419. Global TPA, LLC, Subsidiary of Defendants-Appellees

420. Golden Security Insurance Co., Affiliate of Defendants-Appellees
421. Golden West Health Plan, Inc., Subsidiary of Defendants-Appellees
422. Goodin, Janeen, Plaintiff-Appellee
423. Goodman, Jason, Plaintiff-Appellee
424. Goodman, Tom A., Plaintiff-Appellee
425. Goodsir, David, Counsel for Defendants-Appellees
426. Gordon Ball Law Office, Counsel for Plaintiffs-Appellees
427. Gordon Jr., Ben W., Counsel for Plaintiffs-Appellees
428. Government Management Services, LLC, Affiliate of Defendants-Appellees
429. Grabar Law Office, Counsel for Plaintiffs-Appellees
430. Grant & Eisenhofer, Counsel for Plaintiffs-Appellees
431. Greg Davis Law, LLC, Counsel for Plaintiffs-Appellees
432. Greater Georgia Life Insurance Company, Subsidiary of Defendants- Appellees
433. Green, Cheri D., Counsel for Defendants-Appellees
434. Greenberg Traurig, PA, Counsel for Defendants-Appellees
435. Group Hospitalization and Medical Services, Inc., Defendant-Appellee

436. Group Hospitalization and Medical Services, Inc. d/b/a CareFirst BlueCross BlueShield, Defendant-Appellee
437. Group Insurance Services, Inc., Affiliate of Defendants-Appellees
438. GuideWell Mutual Holding Corporation, Parent to Defendants-Appellees
439. Guin, David J., Counsel for Plaintiffs-Appellees
440. Guin, Stokes & Evans, LLC, Counsel for Plaintiffs-Appellees
441. Gustafson Gluek PLLC, Counsel for Plaintiffs-Appellees
442. Gustafson, Daniel E., Counsel for Plaintiffs-Appellees
443. Haden, Ed R., Counsel for Defendants-Appellees
444. Hansen, Chad D., Counsel for Defendants-Appellees
445. Hare, Scott M., Counsel for Plaintiffs-Appellees
446. Harrell, J. Wells, Counsel for Plaintiffs-Appellees
447. Harvalis, Jim, Affiliated with Counsel for Defendants-Appellees
448. Harwood, Jr., Hon. R. Bernard, Special Master
449. Hauser, Brian C., Counsel for Defendants-Appellees
450. Hausfeld LLP, Counsel for Plaintiffs-Appellees
451. Hausfeld, Michael, Counsel for Plaintiffs-Appellees
452. Hawaii Medical Service Association d/b/a Blue Cross and Blue Shield of Hawaii, Defendant-Appellee

453. Hawran, Gregory R., Counsel for Defendants-Appellees
454. Hayes, Lisa N., Counsel for Plaintiffs-Appellees
455. Hazzard Law, LLC, Counsel for Plaintiffs-Appellees
456. Hazzard, Brent, Counsel for Plaintiffs-Appellees
457. HD Operations Holding Company, Inc.
458. Health and Wellness Partners, Inc., Affiliate of Defendants-Appellees
459. Healthbox Nashville LLC, Affiliate of Defendants-Appellees
460. Health Care Service Corporation, Defendant-Appellee
461. Health Care Service Corporation d/b/a Blue Cross Blue Shield of Illinois, Blue Cross Blue Shield of New Mexico, Blue Cross Blue Shield of Oklahoma, Blue Cross and Blue Shield of Montana, Blue Cross Blue Shield of Texas, Defendant-Appellee
462. Healthcare Business Solutions, LLC, Affiliate of Defendants-Appellees
463. HealthKeepers, Inc., Subsidiary of Defendants-Appellees
464. HealthLink HMO, Inc., Subsidiary of Defendants-Appellees
465. HealthLink, Inc., Subsidiary of Defendants-Appellees
466. Healthcare Management Administrators, Inc., Subsidiary of Defendants-Appellees

467. Health Management Corporation, Subsidiary of Defendants-Appellees
468. HealthNow New York Inc., Defendant-Appellee
469. HealthNow New York Inc., d/b/a Blue Cross Blue Shield of Western New York and Blue Shield of Northeastern New York, Defendant-Appellee
470. HealthNow Systems, Inc., Defendant-Appellee
471. Health Options, Inc., Affiliate of Defendants-Appellees
472. HealthPlus HP, LLC, Subsidiary of Defendants-Appellees
473. HealthSun Health Plans, Inc., Subsidiary of Defendants-Appellees
474. Healthy Alliance Life Insurance Company, Defendant-Appellee
475. Hedlund, Daniel C., Counsel for Plaintiffs-Appellees
476. Hellums, Chris T., Counsel for Plaintiffs-Appellees
477. Hendren & Malone PLLC, Counsel for Plaintiffs-Appellees
478. Herman, Matthew J., Counsel for Plaintiffs-Appellees
479. Hess, Hess & Daniel, P.C., Plaintiff-Appellee
480. Hibbett Retail, Inc., Plaintiff-Appellee
481. Hibbett Sporting Goods, Inc., Plaintiff-Appellee
482. Hibbett Inc. (Nasdaq: HIBB), Parent of Plaintiff-Appellee

483. Highmark Blue Cross and Blue Shield of Delaware, Affiliate of Defendants-Appellees
484. Highmark Blue Cross Blue Shield of Delaware, Inc., Defendant-Appellee
485. Highmark Blue Cross Blue Shield of West Virginia, Defendant-Appellee
486. Highmark Health, Parent to Defendants-Appellees
487. Highmark Health Services, d/b/a Highmark Blue Cross Blue Shield of Delaware, Highmark Blue Cross Blue Shield, and Highmark Blue Cross Blue Shield of West Virginia, Defendant-Appellee
488. Highmark Inc., Defendant-Appellee
489. Highmark West Virginia Inc., Affiliate of Defendants-Appellees
490. Highway to Health, Inc., Affiliate of Defendants-Appellees
491. Hill, Hill, Carter, Franco, Cole, & Black, PC, Counsel for Defendants- Appellees
492. Hill, Angie, Plaintiff-Appellee
493. Hill, Ross, Plaintiff-Appellee
494. HMO Colorado, Subsidiary of Defendants-Appellees
495. HMO Louisiana, Inc., Affiliate of Defendants-Appellees
496. HMO Missouri Inc., Defendant-Appellee

497. HMO Missouri, Inc. (Anthem Blue Cross and Blue Shield of Missouri), Defendant-Appellee
498. HMO Partners, Inc., Affiliate of Defendants-Appellees
499. HMSA BSH, Inc., Affiliate of Defendants-Appellees
500. HMSA Foundation, Inc., Affiliate of Defendants-Appellees
501. Hodge, David J., Counsel for Plaintiffs-Appellees
502. Hofmeister, Dan, Counsel for Defendants-Appellees
503. Hogan Lovells US LLP, Counsel for Defendants-Appellees
504. Hogan, E. Desmond, Counsel for Defendants-Appellees
505. Hogewood, Mark M., Counsel for Defendants-Appellees
506. Holland & Knight, Counsel for Defendants-Appellees
507. Holmes, Janet Brooks, Counsel for Plaintiffs-Appellees
508. Holmstead, Zachary D., Counsel for Defendants-Appellees
509. Holton, John R., Counsel for Plaintiffs-Appellees
510. Holton, Timothy R., Counsel for Plaintiffs-Appellees
511. Home Depot Group Benefits Plan
512. The Home Depot, Inc. (HD)
513. The Home Depot Medical and Dental Plan
514. The Home Depot U.S.A., Inc., Interested Party-Appellant
515. Homer Law Firm, PC, Counsel for Plaintiffs-Appellees

516. Hoover, Craig A., Counsel for Defendants-Appellees
517. Horizon Blue Cross and Blue Shield of New Jersey, Defendant-Appellee
518. Horizon Blue Cross Blue Shield of New Jersey, Defendant-Appellee
519. Horizon Casualty Services, Inc., Affiliate of Defendants-Appellees
520. Horizon Healthcare Dental, Inc., Affiliate of Defendants-Appellees
521. Horizon Healthcare of New Jersey, Inc. (which also operates under the name Horizon NJ Health), Affiliate of Defendants-Appellees
522. Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross and BlueShield of New Jersey, Defendant-Appellee
523. Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, Defendant-Appellee
524. Horizon Insurance Company, Affiliate of Defendants-Appellees
525. Horner, Chelsea L., a.k.a. Chelsea Horner Templeton, Plaintiff-Appellee.
526. Horton, William H., Counsel for Plaintiffs-Appellees
527. Hospital Service Association of Northeastern Pennsylvania d/b/a Blue Cross of Northeastern Pennsylvania, Defendant-Appellee
528. Hospital Service Association of Northeastern Pennsylvania d/b/a Blue Cross of Northeastern Pennsylvania, Defendant-Appellee

529. Hume, Hamish P.M., Counsel for Plaintiffs-Appellees
530. IMA, Inc., Affiliate of Defendants-Appellees
531. Ichter, Davis, Counsel for Plaintiffs-Appellees
532. Independence Blue Cross, LLC, Parent to Defendants-Appellees
533. Independence Health Group Inc., Parent to Defendants-Appellees
534. Independence Hospital Indemnity Plan, Inc., f/k/a Independence Blue Cross, Defendant-Appellee
535. IngenioRx, Inc., Subsidiary of Defendants-Appellees
536. Instil Health Insurance Company, Affiliate of Defendants-Appellees
537. Insua, Nicholas, Counsel for Defendants-Appellees
538. Integrated Services, Inc., Affiliate of Defendants-Appellees
539. International Plan Solutions, LLC, Affiliate of Defendants-Appellees
540. Iron Gate Technology, Inc., Plaintiff-Appellee
541. Ironshore Inc., Insurer of Defendants-Appellees
542. Iron-Starr Excess Agency Ltd., Insurer of Defendants-Appellees
543. Isaacson, William A., Counsel for Plaintiffs-Appellees
544. Jackson, Anthony F., Counsel for Plaintiff-Appellee
545. James Hoyer, P.A., Plaintiff-Appellee
546. Jameson, Joel, Plaintiffs-Appellees

547. Jenks and Associates, Counsel for Plaintiffs-Appellees
548. Jenks III, James K., Counsel for Plaintiffs-Appellees
549. Jenner & Block LLP, Counsel for Defendants-Appellees
550. Jewelers Trade Shop, Plaintiff-Appellee
551. John D. Saxon, P.C., Counsel for Plaintiffs-Appellees
552. Johnson, John M., Counsel for Defendants-Appellees
553. Johnston, Clint, Plaintiff-Appellee
554. Jones & Swartz PLLC, Counsel for Plaintiffs-Appellees
555. Jones Ward PLC, Counsel for Plaintiffs-Appellees
556. Jones, Bruce C., Counsel for Plaintiffs-Appellees
557. Jones, Lawrence, Counsel for Plaintiffs-Appellees
558. Jones, Megan, Counsel for Plaintiffs-Appellees
559. Jose, Elizabeth, Counsel for Defendants-Appellees
560. Kalisky, Alyssa C., Counsel for Defendants-Appellees
561. Kapke & Willerth LLC, Counsel for Plaintiffs-Appellees
562. Kaplan, Andrew D., Counsel for Defendants-Appellees
563. Kappel, Brian P., Counsel for Defendants-Appellees
564. Kaufman, R. David, Counsel for Defendants-Appellees
565. Kaufman Borgeest & Ryan LLP, Counsel for Insurer
566. Kellner, William E., Counsel for Defendants-Appellees

567. Kelso, Trent, Plaintiff-Appellee
568. Kennedy, Lauren R., Counsel for Defendants-Appellees
569. Kenney, Jeannine M., Counsel for Plaintiffs-Appellees
570. Keystone Health Plan Central, Inc., Affiliate of Defendants-Appellees
571. Keystone Medical Imaging, LLC, Affiliate of Defendants-Appellees
572. Kilene, Jason S., Counsel for Plaintiffs-Appellees
573. Kilpatrick Townsend & Stockton LLP, Counsel for Defendants-Appellees
574. Kilpela, Jr., Edwin, J., Counsel for Plaintiffs-Appellees
575. Kimble, Cavender C., Counsel for Defendants-Appellees
576. Kirk, Michael, Counsel for Plaintiffs-Appellees
577. Kirkland & Ellis LLP, Counsel for Defendants-Appellees
578. Knapp, Scott R., Counsel for Defendants-Appellees
579. Knott, Jason M., Counsel for Plaintiffs-Appellees
580. Koch, H. James, Counsel for Defendants-Appellees
581. Kochanowski, Andrew J., Counsel for Plaintiffs-Appellees
582. Korn, David H., Counsel for Defendants-Appellees
583. Kravitz, Carl S., Counsel for Plaintiffs-Appellees
584. Krieger, Mark, Plaintiff-Appellee

585. Kudulis, Johnathan, Counsel for Plaintiffs-Appellees
586. Kudulis, Resisinger, & Price, Counsel for Plaintiffs-Appellees
587. Labauve, Elizabeth Barnett, Counsel for Defendants-Appellees
588. Lambert, Kenneth, Counsel for Defendants-Appellees
589. Langston & Lott, P.A., Counsel for Plaintiffs-Appellees
590. L Laytin, P.C., Daniel E., Counsel for Defendants-Appelleesaw
Office of Stephen M. Hansen, Counsel for Plaintiffs-Appellees
591. Laytin, P.C., Daniel E., Counsel for Defendants-Appellees
592. Lemmon Law Firm, Counsel for Plaintiffs-Appellees
593. Lemmon, Andrew, Counsel for Plaintiffs-Appellees
594. Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A.,
Counsel for Plaintiffs-Appellees
595. Lieberman, Michael W., Counsel for Defendants-Appellees
596. LifeMap Assurance Company, Subsidiary of Defendants-Appellees
597. Life Secure Insurance Company Holdings, Affiliate of Defendants-
Appellees
598. Lifetime Healthcare, Inc., Defendant-Appellee
599. Lightfoot Franklin & White LL, Counsel for Defendants-Appellees
600. Liskow & Lewis, Counsel for Plaintiffs-Appellees

601. Lite Depalma Greenberg & Afanador, LLC, Counsel for Plaintiffs-Appellees
602. Little, Jonathan Charles - Counsel for Plaintiffs-Appellees
603. Lloyd's of London, Insurer of Defendants-Appellees
604. Lockard & Williams Insurance Services, Inc., Affiliate of Defendants- Appellees
605. Lockridge Grindal Nauen P.L.L.P, Counsel for Plaintiffs-Appellees
606. London ACE, Insurer of Defendants-Appellees
607. Lott, Casey Langston, Counsel for Plaintiffs-Appellees
608. Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana, Defendant-Appellee
609. Lovell & Nalley, Counsel for Plaintiffs-Appellees
610. Lowrey, IV, Frank M., Counsel for Interested Party-Appellant
611. Lydian, LLC, Affiliate of Defendants-Appellees
612. Lytle, Joann, Counsel for Defendants-Appellees
613. Macrae, Amy, Plaintiff-Appellee
614. Maier, Jeny M., Counsel for Defendants-Appellees
615. Malatesta, III, John Thomas A., Counsel for Defendants-Appellees
616. Malone, J. Michael, Counsel for Plaintiffs-Appellees
617. Mandel and Mandel, LLP, Counsel for Plaintiffs-Appellees

618. Mann, Jonathan S., Counsel for Plaintiffs-Appellees
619. Marino Law, PLLC, Counsel for Plaintiffs-Appellees
620. Mark W. Wasvery, PC, Counsel for Defendants-Appellees
621. Marshall III, Charles F., Counsel for Defendants-Appellees
622. Martin, John D., Counsel for Defendants-Appellees
623. Martin, Scott Allen, Counsel for Plaintiffs-Appellees
624. Martinez, Jr., Esq., Elio F., Counsel for Defendants-Appellees
625. Massachusetts Benefit Administrators, LLC, Affiliate of
Defendants- Appellees
626. Mathias, John, Counsel for Defendants-Appellees
627. Matthew Thornton Health Plan, Inc., Subsidiary of Defendants-
Appellees
628. Maynard Cooper & Gale PC, Counsel for Defendants-Appellees
629. McCafee & Taft, P.C., Counsel for Interested Party-Appellant
630. McCallum, Methvin & Terrell, PC, Counsel for Plaintiffs-Appellees
631. McCallum, Phillip W., Counsel for Plaintiffs-Appellees
632. McCarter & English, LLP, Counsel for Defendants-Appellees
633. McDevitt, Larry, Counsel for Plaintiffs-Appellees
634. McDonald, Yawanna N., Counsel for Defendants-Appellees
635. McDonough, James C., Counsel for Plaintiffs-Appellees

636. McDowell, M. Patrick, Counsel for Defendants-Appellees
637. McGartland & Borchardt LLP, Counsel for Plaintiffs-Appellees
638. McGartland, Michael, Counsel for Plaintiffs-Appellees
639. McGartland Law Firm, PLLC, Counsel for Plaintiffs-Appellees
640. McGill, Brian, Plaintiff-Appellee
641. McGill, Rochelle, Plaintiff-Appellee
642. McKane, Mark E., Counsel for Defendants-Appellees
643. McKay Cauthen Settana and Stubley, Counsel for Plaintiffs-Appellees
644. McLean, Ronald H., Counsel for Defendants-Appellees
645. McLeod, Aaron G., Counsel for Defendants-Appellees
646. MCS Holdings, Inc., Affiliate of Defendants-Appellees
647. Means Gillis Law, LLC, Counsel for Plaintiffs-Appellees
648. Medical Helpline, LLC, Affiliate of Defendants-Appellees
649. Medrisk Actuarial Services, LLC, Affiliate of Defendants-Appellees
650. Meierhenry Sargent LLP, Counsel for Plaintiffs-Appellees
651. Menge, Mary G., Counsel for Defendants-Appellees
652. Meridian Resources Company, LLC, Subsidiary of Defendants-Appellees
653. Meriwether, Ellen, Counsel for Plaintiffs-Appellees

654. Methvin, Terrell, Yancy, Stephens & Miller, P.C., Counsel for Plaintiffs-Appellees
655. Methvin, Jr., Robert G., Counsel for Plaintiffs-Appellees
656. Meyers, D. Kent, Counsel for Defendants-Appellees
657. Midwest Benefit Consultants, Inc., Defendant-Appellee
658. Mills, Linda, Plaintiff-Appellee
659. Montis, Inc., Plaintiff-Appellee
660. Morris, King & Hodge, Counsel for Plaintiffs-Appellees
661. Morris, Scott A., Plaintiff-Appellee
662. Mosaic Group Services, LLC, Affiliate of Defendants-Appellees
663. Moylan, Daniel Patrick, Counsel for Plaintiffs-Appellees
664. Murphy & Murphy LLC, Counsel for Plaintiffs-Appellees
665. Murphy, Erin E., Counsel for Defendants-Appellees
666. Murphy, Michael L., Counsel for Plaintiffs-Appellees
667. My Care Alabama, Inc., Affiliate of Defendants-Appellees
668. Nalley, John Doyle, Counsel for Plaintiffs-Appellees
669. Naranjo, Michael A., Counsel for Defendants-Appellees
670. Nast, Dianne M., Counsel for Plaintiffs-Appellees
671. NastLaw LLC, Counsel for Plaintiffs-Appellees
672. NDBH Holding Company, LLC, Affiliate of Defendants-Appellees

673. Nelson Mullins Riley & Scarborough LLP, Counsel for Defendants-Appellees
674. Nelson, Christopher, Counsel for Plaintiffs-Appellees
675. Netting, Irma L., Counsel for Plaintiffs-Appellees
676. New Directions Behavioral Health, LLC, Affiliate of Defendants-Appellees
677. Niagara Life and Health Insurance Company, Affiliate of Defendants- Appellees
678. Nix, Jess R., Counsel for Defendants-Appellees
679. Nix, Richard D., Counsel for Interested Party-Appellant
680. NobleHealth, Inc., Affiliate of Defendants-Appellees
681. Nordin, Daniel J., Counsel for Plaintiffs-Appellees
682. Noridian Mutual Insurance Company, d/b/a Blue Cross Blue Shield of North Dakota, Defendant-Appellee
683. Norman, Brian K., Counsel for Defendants-Appellees
684. Nyemaster Goode PC, Counsel for Defendants-Appellees
685. O'Brien, Charles A., Counsel for Defendants-Appellees
686. O'Connell, Sean T., Counsel for Plaintiffs-Appellees
687. Ogletree Deakins Nash Smoak & Stewart PC, Counsel for Defendants- Appellees

688. O'Melveny & Myers LLP, Counsel for Defendants-Appellees
689. OneBeacon Insurance Group (including Atlantic Specialty Insurance Company and Homeland Insurance Company), Insurer of Defendants- Appellees
690. Onlife Health, Inc., Affiliate of Defendants-Appellees
691. Optimum Healthcare, Inc., Subsidiary of Defendants-Appellees
692. PGBA, LLC, Affiliate of Defendants-Appellees
693. Pacella, Mario Anthony, Counsel for Plaintiffs-Appellees
694. Page, Edwin Allen, Counsel for Interested Party-Appellant
695. Palmer, Tim A., Counsel for Defendants-Appellees
696. Palmetto GBA, LLC, Affiliate of Defendants-Appellees
697. Paul Weiss Rifkind Wharton – Counsel for Plaintiffs-Appellees
698. Payne, Joshua K., Counsel for Defendants-Appellees
699. Payton, Gwendolyn C., Counsel for Defendants-Appellees
700. PCS, LLC, Affiliate of Defendants-Appellees
701. Pearce, Bevill, Leesburg, Moore, P.C., Plaintiff-Appellee
702. Pendley, Baudin & Coffin LLP, Counsel for Plaintiffs-Appellees
703. Pendley, Patrick W., Counsel for Plaintiffs-Appellees
704. Penney, Brant, Counsel for Plaintiffs-Appellees
705. Pennington, Michael R., Counsel for Interested Party-Appellant

706. Perlman, Alan J., Counsel for Defendants-Appellees
707. Pete Moore Chevrolet, Inc., Plaintiff-Appellee
708. Peterson, Rebecca, Counsel for Plaintiffs-Appellees
709. Pettus Plumbing & Piping, Inc, Plaintiff-Appellee
710. Pham, Allison N., Counsel for Defendants-Appellees
711. Phillips Lytle LLP, Counsel for Defendants-Appellees
712. Physicians' Service, d/b/a Blue Shield of California, Defendant-Appellee
713. Piercy, Deborah, Plaintiff-Appellee
714. Pioneer Farm Equipment, Inc., Plaintiff-Appellee
715. Pittman Dutton Hellums, Bradley and Mann, P.C., Counsel for Plaintiffs-Appellees
716. Planned Administrators, Inc., Affiliate of Defendants-Appellees
717. Pollack-Avery, Elizabeth, Counsel for Plaintiffs-Appellees
718. Preferred Care Services, Inc., Affiliate of Defendants-Appellees
719. Premara Blue Cross of Washington, Defendant-Appellee
720. Premara, d/b/a Premara Blue Cross Blue Shield of Alaska, Defendant- Appellee
721. Premera Blue Cross, d/b/a Premera Blue Cross Blue Shield of Alaska, Defendant-Appellee

- 722. Priester, James L., Counsel for Defendants-Appellees
- 723. Prime Therapeutics, LLC, Affiliate of Defendants-Appellees
- 724. Proctor, Hon. R. David (N.D. Ala.)
- 725. Provosty & Gankendorff, LLC, Counsel for Plaintiffs-Appellees
- 726. Putnam, Hon. T. Michael (N.D. Ala.)
- 727. Quinlan, Patrick J., Counsel for Plaintiffs-Appellees
- 728. Quinn, Connor, Weaver, Davies & Ruoco LLP, Counsel for Plaintiffs- Appellees
- 729. Ragsdale, Barry A., Plaintiffs' Liaison Counsel
- 730. Redgrave, Jonathan M., Counsel for Defendants-Appellees
- 731. Redgrave, LLP, Counsel for Defendants-Appellees
- 732. Redgrave, Victoria A., Counsel for Defendants-Appellees
- 733. Reed Smith LLP, Counsel for Defendants-Appellees
- 734. Reeves, Harold S., Counsel for Plaintiffs-Appellees
- 735. Regence BlueCross BlueShield of Oregon, Defendant-Appellee
- 736. Regence BlueCross BlueShield of Utah, Defendant-Appellee
- 737. Regence BlueShield, Defendant-Appellee
- 738. Regence BlueShield of Idaho, Inc., Defendant-Appellee
- 739. Regence Insurance Holding Corporation, Subsidiary of Defendants- Appellees

- 740. Reichard & Escalera, LLC, Counsel for Defendants-Appellees
- 741. Reinhardt, Wendorf & Blanchfield, Counsel for Plaintiffs-Appellees
- 742. Reis, John, Counsel for Defendants-Appellees
- 743. Reuben, Mindee, Counsel for Plaintiffs-Appellees
- 744. Resolution Health, Inc., Subsidiary of Defendants-Appellees
- 745. Rheaume, Jr., Thomas J., Counsel for Defendants-Appellees
- 746. Rhodes IV, C. Harker, Counsel for Defendants-Appellees
- 747. Richie, John Thomas, Counsel for Interested Party-Appellant
- 748. Rico, Gustavo A. Pabón, Counsel for Defendants-Appellees
- 749. Riebel, Karen Hanson, Counsel for Plaintiffs-Appellees
- 750. RightChoice Managed Care, Inc., Defendant-Appellee
- 751. Riley & Jackson, PC, Counsel for Defendants-Appellees
- 752. Riley, Jr., Robert R., Counsel for Defendants-Appellees
- 753. Riverbend Govt. Benefits Administrator, Inc., Affiliate of
Defendants- Appellees
- 754. RiverTrust Solutions, Inc., Affiliate of Defendants-Appellees
- 755. RLI/RSUI, Insurer of Defendants-Appellees
- 756. Roach, Benjamin Patrick, Counsel for Defendants-Appellees
- 757. Robertson, John Robert, Counsel for Defendants-Appellees
- 758. Robinovitch, Hart L., Counsel for Plaintiffs-Appellees

- 759. Robinson, Kenneth J., Counsel for Plaintiffs-Appellees
- 760. Rockforte, Nicholas R., Counsel for Plaintiffs-Appellees
- 761. Rocky Mountain Hospital & Medical Service Inc., d/b/a Anthem
Blue Cross Blue Shield of Colorado, Defendant-Appellee
- 762. Rocky Mountain Hospital & Medical Service Inc., d/b/a Anthem
Blue Cross Blue Shield of Nevada, Defendant-Appellee
- 763. Rodanast, P.C., Counsel for Plaintiffs-Appellees
- 764. Rodríguez, Rafael Escalera, Counsel for Defendants-Appellees
- 765. Rolison Trucking Co., LLC, Plaintiff-Appellee
- 766. Roman, Tracy A., Counsel for Defendants-Appellees
- 767. Ross, April N., Counsel for Defendants-Appellees
- 768. Rouco, Richard, Counsel for Plaintiffs-Appellees
- 769. Rowe, Stephen A., Counsel for Defendants-Appellees
- 770. Rutenberg, Alan D., Counsel for Defendants-Appellees
- 771. Ruzic, Emily Myers, Counsel for Interested Party-Appellant
- 772. Rx Concepts, Ltd. Co., Affiliate of Defendants-Appellees
- 773. Saccoccio & Lopez, Plaintiff-Appellee
- 774. Sadler Electric, Plaintiff-Appellee
- 775. Saeed & Little, LLP, Counsel for Plaintiffs-Appellees
- 776. Salomon, Anne, Counsel for Defendants-Appellees

- 777. Sansbury, Michael T., Counsel for Defendants-Appellees
- 778. Sargent, Clint, Counsel for Plaintiffs-Appellees
- 779. Saxon, John, Counsel for Plaintiffs-Appellees
- 780. Scheller, Kathryn, Plaintiff-Appellee
- 781. Schmidt, Jr., John G., Counsel for Defendants-Appellees
- 782. Schneider, Sydney L., Counsel for Defendants-Appellees
- 783. Schwiep, Paul J., Counsel for Defendants-Appellees
- 784. Scott & Cain, Counsel for Plaintiffs-Appellees
- 785. Scott Jr., Thomas S., Counsel for Plaintiffs-Appellees
- 786. Scott, Lee McArthur, Counsel for Plaintiffs-Appellees
- 787. SecurityCare of Tennessee, Inc., Affiliate of Defendants-Appellees
- 788. Self Insured Plans, LLC, Affiliate of Defendants-Appellees
- 789. Serkland Law Firm, Counsel for Defendants-Appellees
- 790. Shaheen & Gordon, P.A., Counsel for Plaintiffs-Appellees
- 791. Shamoun & Norman, LLP, Counsel for Defendants-Appellees
- 792. Shared Health, Inc., Affiliate of Defendants-Appellees
- 793. Sharo Law, LLP, Counsel for Plaintiffs-Appellees
- 794. Sharp Law, LLP
- 795. Sharp, Marla S., Plaintiff-Appellee
- 796. Shaw, Adam R., Counsel for Plaintiffs-Appellees

797. Shearman & Sterling LLP, Counsel for Defendants-Appellees
798. Sheppard, Mullin, Richter & Hampton LLP, Counsel for Insurer
799. Sheridan, Judy, Plaintiff-Appellee
800. Simply Healthcare Plans, Inc., Subsidiary of Defendants-Appellees
801. Sirocco, Inc., Plaintiff-Appellee
802. Slate, Pamela B., Counsel for Defendants-Appellees
803. Small, Daniel, Counsel for Plaintiffs-Appellees
804. Smith, Scott Burnett, Counsel for Interested Party-Appellant
805. Smith, Cyril V., Counsel for Plaintiffs-Appellees
806. Snyder, Eric B., Counsel for Plaintiffs-Appellees
807. Socios Mayores en Salud Holdings, Inc., d/b/a Triple-S Advantage,
Affiliate of Defendants-Appellees
808. Sommers Schwartz PC, Counsel for Plaintiffs-Appellees
809. Sooy, Kathleen Taylor, Counsel for Defendants-Appellees
810. Sompo International, Insurer of Defendants-Appellees
811. Southeast Services, Inc., Subsidiary of Defendants-Appellees
812. Southern Diversified Business Services, Inc., Affiliate of
Defendants- Appellees
813. Southern Health Plan, Inc., Affiliate of Defendants-Appellees
814. Spenser, Mark D., Counsel for Interested Party-Appellant

815. Spotswood Sansom & Sansbury LLC, Counsel for Defendants-Appellees
816. Spotswood, Robert K., Counsel for Defendants-Appellees
817. Stark, Michael E., Plaintiff-Appellee
818. Stecker, Brett, Counsel for Plaintiffs-Appellees
819. Stenerson, Todd, Counsel for Defendants-Appellees
820. Stetson, Catherine E., Counsel for Defendants-Appellees
821. Stokes, Tammy, Counsel for Plaintiffs-Appellees
822. Stone & Magnanini LLP, Counsel for Plaintiffs-Appellees
823. Stone Law Firm, LLC, Counsel for Plaintiffs-Appellees
824. Stone, Andrew M., Counsel for Plaintiffs-Appellees
825. Stone, David, Counsel for Plaintiffs-Appellees
826. Stoops, Kevin J., Counsel for Plaintiffs-Appellees
827. Strauss & Boies LLP, Counsel for Plaintiffs-Appellees
828. Strom Law Firm, Counsel for Plaintiffs-Appellees
829. Strutt, Jennifer, Counsel for Defendants-Appellees
830. Sudekum, Michael J., Counsel for Plaintiffs-Appellees
831. Swank, Ami, Counsel for Plaintiffs-Appellees
832. Swartz, Eric B., Counsel for Plaintiffs-Appellees
833. Sweeris, Charles L., Counsel for Defendants-Appellees

834. The Sweet Law Firm, PC Counsel for Plaintiffs-Appellees
835. Sweet, Benjamin, Counsel for Plaintiffs-Appellees
836. Taylor, Jr., Daniel R., Counsel for Defendants-Appellees
837. Templeton, Quentin, Counsel for Plaintiffs-Appellees
838. Tennessee Health Foundation, Inc., Affiliate of Defendants-Appellees
839. Terrell, James M., Counsel for Plaintiffs-Appellees
840. Tessellate Holdings, LLC, Affiliate of Defendants-Appellees
841. Tessier, Kevin, Counsel for Defendants-Appellees
842. The Caring Foundation, Affiliate of Defendants-Appellees
843. The Cowan Law Firm, Counsel for Plaintiffs-Appellees
844. The Dampier Law Firm PC, Counsel for Plaintiffs-Appellees
845. The Van Winkle Law Firm, Counsel for Plaintiffs-Appellees
846. The Weiser Law Firm, P.C., Counsel for Plaintiffs-Appellees
847. Thomas Cooper & Co., Inc., Affiliate of Defendants-Appellees
848. Thomas, Nancy, Plaintiff-Appellee
849. Thompson, Charles M., Counsel for Plaintiffs-Appellees
850. Thompson, Jason, Counsel for Plaintiffs-Appellees
851. Thompson, John G., Plaintiff-Appellee
852. Tomazzoli, Lisa, Plaintiff-Appellee

853. Topographic, Inc., Interested Party-Appellant
854. Total Dental Administrators Health Plan, Inc., Affiliate of Defendants- Appellees
855. Total Dental Administrators of Utah, Inc., Affiliate of Defendants- Appellees
856. Total Dental Administrators, Inc., Affiliate of Defendants-Appellees
857. TrailBlazer Health Enterprises, LLC, Affiliate of Defendants- Appellees
858. The Travelers Companies, Inc. (TRV), Insurer of Defendants- Appellees
859. Tri-West, Affiliate of Defendants-Appellees
860. Tricenturion, Inc., Affiliate of Defendants-Appellees
861. Trinnovate Ventures, Inc., Affiliate of Defendants-Appellees
862. Triple-S Blue, Inc., d/b/a BlueCross BlueShield Costa Rica, Affiliate of Defendants-Appellees
863. Triple-S Management Corporation, Parent to Defendants-Appellees
864. Triple-S Propiedad, Inc., Affiliate of Defendants-Appellees
865. Triple-S Salud, Defendant-Appellee
866. Triple-S Salud, Inc., Defendant-Appellee
867. Triple-S Vida, Inc., Affiliate of Defendants-Appellees

868. Turner, Ashley, Counsel for Defendants-Appellees
869. Tyner, Star Mishkel, Counsel for Plaintiffs-Appellees
870. UNICARE Health Plan of West Virginia, Inc., Subsidiary of Defendants-Appellees
871. UniCare Life & Health Insurance Company, Subsidiary of Defendants- Appellees
872. UNICARE National Services, Inc., Subsidiary of Defendants- Appellees
873. UniCare Specialty Services, Inc., Subsidiary of Defendants- Appellees
874. Umatilla Properties, LLC (Parent Corp of Recovery Village at Umatilla, LLC), Plaintiff-Appellee
875. USABle Mutual Insurance Company, d/b/a Arkansas Blue Cross and Blue Shield, Defendant-Appellee
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883. Vaughan Pools, Inc., Plaintiff-Appellee
884. Vermont Health Plan LLC, Affiliate of Defendants-Appellees
885. VHP Insurance Solutions, LLC, Affiliate of Defendants-Appellees
886. Vibra Health Plan Holdings, LLC, Affiliate of Defendants-Appellees
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906. Wellmark Synergy Health, Inc., Affiliate of Defendants-Appellees
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908. Wellmark, Inc. d/b/a Blue Cross and Blue Shield of Iowa, Defendant-Appellee
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910. WellPoint California Services, Inc., Subsidiary of Defendants-Appellees
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INTEREST OF AMICUS CURIAE AND OVERVIEW

The District Court has stated that “[t]hose who are Self-Funded are just that—self-funded. That is, they did not buy insurance from the Blues.”¹ As written, this statement is not accurate and the *amici* support reversal as to this statement by the District Court. In our experience as insurance industry regulators, self-funded plans frequently purchase stop-loss insurance. The Oklahoma Insurance Department, Arkansas Insurance Department, California Department of Insurance, Georgia Office of Insurance and Safety Fire Commissioner, Idaho Department of Insurance, Maine Bureau of Insurance, the Nevada Division of Insurance, Vermont Department of Financial Regulation, Washington State Office of the Insurance Commissioner, and Wisconsin Office of the Commissioner of Insurance (collectively the “Insurance Commissioners” and pursuant to their authority under McCaren-Ferguson Act, 15 U.S.C. §§ 1011, *et seq.*) have concerns that the District Court’s erroneous description of self-funded plans could be misused to cast doubt on the authority to regulate stop-loss insurance products, with corresponding negative implications for consumers. Therefore, this brief is designed to further inform this Court and request caution when issuing its decision.

¹ Final Order & Judgment Granting Approval of Subscriber Class Action Settlement & Appointing Settlement Adm’r at 61, *In re: Blue Cross Blue Shield*, No. 2:13-cv-20000-RDP (N.D. Ala. Aug. 9, 2022), ECF No. 2931 (“Final Order”).

STATEMENT OF THE ISSUE

1. Whether the District Court erred when stating that “[t]hose who are Self-Funded are just that—self-funded. That is, they did not buy insurance from the Blues.”

SUMMARY OF THE ARGUMENT

The District Court erroneously stated that “[t]hose who are Self-Funded are just that—self-funded. That is, they did not buy insurance from the Blues.” This statement is incorrect for several reasons and should be reversed. Self-funded plans frequently purchase stop-loss insurance to limit their exposure. Stop-loss insurance is not reinsurance. The Seventh Circuit agreed with the National Association of Insurance Commissioners (“NAIC”) in *Edstrom Industries, Inc. v. Companion Life Ins. Co.*² when reversing the lower court’s decision and finding that stop-loss coverage is not reinsurance but insurance. Additionally, each of the circuit courts of appeals has viewed stop-loss coverage as insurance.

The District Court erred when it assumed that self-funding or buying insurance is an either/or choice. Self-funded plans often have complex structures, and it is common for self-funded plans to buy administrative services **and** stop-loss insurance from the Blues. Because of this complex structure, the Insurance

² 516 F.3d 546 (7th Cir. 2008) (citations omitted).

Commissioners believe their regulatory experience will be of help in informing this Court as it works to determine the proper outcome and protect consumers.

The District Court’s statement has the potential for significantly impacting the regulation of stop-loss insurance. Importantly, state laws regulating stop-loss insurance are not preempted by federal law. In fact, the NAIC has a stop-loss insurance model law, and many states have enacted statutes regulating stop-loss insurance. The loss of regulatory authority for states over stop-loss insurance would likely result in an increase in adverse selection, insufficient regulatory oversight, and loss of priority for the insureds during liquidation. Each alone is a significant concern for consumer protection. Therefore, the Insurance Commissioners request this Court reverse the District Court’s statement that the self-funded plans did not buy insurance from the Blues.

ARGUMENT

I. What is Stop-Loss Insurance?

Stop-loss insurance is “coverage purchased by employers in order to limit their exposure.”³ It is also referred to as “excess” insurance. This has sometimes been mistakenly viewed as reinsurance. But stop-loss insurance is *not* reinsurance⁴

³ HARVEY W. RUBIN, DICTIONARY OF INSURANCE TERMS 493 (5th ed. 2008).

⁴ See KENNETH THOMPSON, REINSURANCE, 7–8 (4th ed. 1966).

because the policy is between the employer plan and an insurer—not an insurer and insurer.⁵ As the Seventh Circuit explained in *Edstrom Industries, Inc. v. Companion Life Ins. Co.*:⁶

The magistrate judge’s ruling that stop-loss insurance is reinsurance under Wisconsin law is perhaps understandable, because “unlike traditional group-health insurance, stop-loss insurance is akin to reinsurance in that it does not provide coverage directly to plan members or beneficiaries.” But kinship is not enough.... Stop-loss insurance is an insurance policy for losses that the insured self-insures up to the limit of the deductible. Reinsurance contracts are (largely) unregulated because they are contracts between insurance companies.... Edstrom [the employer] is not an insurance company, but an insured.

Stop-loss coverage does not pay out immediately but only when certain triggers occur. In its purest form, stop-loss insurance has two distinct triggers: “specific stop-loss” and “aggregate stop-loss.”⁷ A specific stop-loss policy provides coverage when an *individual* claim reaches a threshold specified in the contract.⁸ But

⁵ See Nat. Ass’n of Ins. Comm’rs’ Brief of Amicus Curiae in Support of Appellants and Supporting Reversal of the Judgment Below, *Edstrom Industries, Inc. v. Companion Life Ins. Co.*, 516 F.3d 546 (2008) (No. 07-2165) (“NAIC Edstrom Brief”); see also *id.* at 5 (analyzing the relationship between the stop-loss insurer and employee).

⁶ *Edstrom Industries, Inc.*, *supra* note 2, at 550–51 (citations omitted).

⁷ See NAT. ASS’N OF INS. COMM’RS, WHITE PAPER: STOP LOSS INSURANCE, SELF-FUNDING AND THE ACA 2–3 (2015) (“NAIC White Paper”).

⁸ RUBIN, *supra* note 3; 1A STEVEN Pitt ET AL., COUCH ON INS. (3d ed. 2022). See generally Edward Alburo Morrissey, *Deem and Deemer: ERISA Preemption Under the Deemer Clause as Applied to Employer Health Care Plans With Stop-Loss Insurance*, 23 J. LEGIS. 307 (1997); JOHN F. WAGNER, Annotation, *Construction and application of pre-emption exemption, under Employee Retirement Income Security Act (29 U.S.C.A. §§ 1001 et seq.), for state laws regulating insurance, banking, or*

coverage under an aggregate stop-loss policy does not kick in until the *total* amount of claims payments reach a specific amount (e.g., 125% of the annual estimated group health claims cost).⁹ The threshold value for each type of trigger is often referred to as an “attachment point.”¹⁰

The purpose of a stop-loss policy is to “protect[] a self-funded plan from extremely large losses.”¹¹ Self-funded plans face these large losses due to shock claims, high utilization claims, and timing risk.¹² Shock claims are claims with a “high dollar [amount] but low frequency.”¹³ High utilization claims are claims with a “low dollar [amount] but unusually high frequency.”¹⁴ Timing risk is the risk incurred by the plans because they “need[] to pay claims when they are incurred”—instead of a fixed premium every month as fully-insured employers pay.¹⁵ An employer plan can “transfer some of its risk of loss to a stop loss insurer by purchasing a stop loss insurance policy,”¹⁶ which will reimburse the plan for claims

securities (29 U.S.C.A. § 1144(b)(2)), 87 A.L.R. Fed. 797 (originally published in 1988) (discussing effect of stop-loss coverage on ERISA preemption). *See also* NAIC White Paper, *supra* note 7, at 2–3.

⁹ *Id.*; PITT, *supra* note 8.

¹⁰ NAIC White Paper, *supra* note 7, at 2–4 & 6.

¹¹ PITT, *supra* note 8.

¹² *See* NAIC White Paper, *supra* note 7, at 2–3.

¹³ NAIC White Paper, *supra* note 7, at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 2.

paid out when the coverage is triggered. However, excessive risk transfer is often prohibited.¹⁷

II. What is a Self-Funded Plan?

The District Court simplistically declared that “[t]hose who are Self-Funded are just that,” but it is not so simple. Broadly speaking,¹⁸ there are two ways employers provide health coverage to employees and their dependents. In a “fully-insured plan,” the employer typically buys a group health insurance policy from a state-licensed and state-regulated insurance company such as one of the “Blues” (the defendant member companies of the Blue Cross and Blue Shield Association (BCBSA)), and the insurance company is then unconditionally responsible to pay all valid claims from its own funds. By contrast, in a “self-funded plan,” it is the employer that takes on the responsibility to ensure that claims are paid, and the employer’s funds that are at risk.

¹⁷ See *id.* at 7. The reason is to prevent regulatory arbitrage when the plan operates as a functional equivalent of a fully-insured plan.

¹⁸ In practice, there is a wide variety of ways either type of plan can be structured, including but not limited to multiple-employer plans, which can be either fully-insured or self-funded, and mechanisms such as stop-loss insurance that share the risk between the employer and an insurance company. The basic distinction between a fully-insured plan and a self-funded plan is whether the entity that is directly responsible to the employee for the payment of claims is an insurance company or the employer itself.

To complicate matters, however, insurance companies are involved in both types of business. In addition to group health insurance, many insurance companies, including the Blues, sell employers what the District Court refers to as “ASO products.”¹⁹ “ASO” is an abbreviation for “administrative services only.” It is used to distinguish an insurance company’s group health insurance business from its “third-party administrator” business.²⁰ ASO plans often have the look and feel of insurance policies, with the insurance company’s usual branding accompanied by a disclaimer that the company is acting as the plan’s “administrator.” The insurance company is paid a fee by the employer for responsibilities that include preparing the coverage documents and adjudicating and paying claims. Enrollees and health care providers who deal with the insurer are often unaware that the company is not actually providing insurance, but rather administering a fund that is provided by the employer, which is responsible for maintaining adequate funding as needed rather than paying a fixed monthly premium.

The fallacy in the District Court’s analysis is a misunderstanding of what the “Only” in “Administrative Services Only” means. An insurer’s ASO services are not insurance, but most self-funded employers buy both administrative services *and*

¹⁹ Final Order, *supra* note 1, at 60.

stop-loss insurance.²¹ If they buy their administrative services from an insurance company, it is common for them to buy their stop-loss insurance from the same company.

And this includes the Blues. Each Blue company is a “health insurance issuer” within the meaning of the Health Insurance Portability and Accountability Act (“HIPAA”) and the Affordable Care Act (“ACA”), but that does not mean “health insurance coverage” is the only insurance coverage they issue.²² Currently, many Blue Cross Blue Shield member companies have a significant presence in the stop-loss market.²³ In other words, they do sell insurance to self-funded plans, although it is not health insurance.

Therefore, the statement that self-funded plans “did not buy insurance from the Blues” is incorrect. The error should be corrected to avoid language that could

²¹ Many self-funded plans also purchase pharmacy benefit management services, dental products, vision products, and other ancillary services.

²² See 42 U.S.C. § 300gg-91(b)(1) & (2). Another potential source of confusion is the District Court’s reference to employer groups that are “insured by any health insurance plan” that is a member of the BCSA. Final Order, *supra* note 1, at 61. For historical reasons, the Blues refer to themselves as “plans”; however, the ACA refers to the Blues as “issuers” and uses the term “plans” to refer to the health insurance coverage they issue. 42 U.S.C. § 18021(b)(1).

²³ MyHealthGuide Newsletter, MyHealthGuide.com https://www.myhealthguide.com/news.htm#Medical_Stop_Loss (last visited Nov. 28, 2022) (listing Blue Cross Blue Shield member companies as two of the top 20 stop-loss providers based on 2021 annual stop-loss premiums).

be misconstrued as implying that stop-loss insurance is not fully subject to state regulatory authority.

III. Stop-Loss Policies are Insurance

Stop-loss policies have been consistently held to be insurance by the federal courts.²⁴ This is accurate because a stop-loss policy takes the risk from the employer plan and transfers it to the insurer by paying money to the employer plan when

²⁴ See *Indep. Serv. Corp. v. Tousant*, 149 F.2d 204 (1st Cir. 1945) (explaining how stop-loss insurance works); *Travelers Ins. Co. v. Cuomo*, 14 F.3d 708 (2nd Cir. 1993) (explaining stop-loss insurance use by self-insurers and generally determining the validity of New York regulation on specific aspects of stop-loss insurance under ERISA); *Bill Gray Enter's, Inc. Emp. Health & Welfare Plan v. Gourley*, 248 F.3d 206 (3rd Cir. 2001) (recognizing that plans purchase stop-loss insurance); *Am. Med. Sec., Inc. v. Bartlett*, 111 F.3d 358, 365 (4th Cir. 1997) (explaining the use of stop-loss insurance by self-funded plans and stating: "This is not to say that Maryland may not regulate stop-loss insurance policies. Such regulation is *clearly* reserved to the states.") (emphasis added); *Bank of La. v. Aetna U.S. Healthcare Inc.*, 468 F.3d 237 (5th Cir. 2006) (explaining the use of stop-loss insurance); *Seaway Food Town, Inc. v. Med. Mut. of Ohio*, 347 F.3d 610, 613 (6th Cir. 2003) (stating that Blue Cross and Blue Shield Mutual of Ohio collected stop-loss premiums and explaining what stop-loss insurance was); *Edstrom Industries, Inc.*, *supra* note 2, at 551 (concluding that "[s]top-loss insurance is an insurance policy for losses that the insured self-insures up to the limit of the deductible" and that stop-loss insurance is not reinsurance); *Leech Lake Tribal Counsel v. Wash. Nat. Ins. Co.*, 227 F.3d 1054, 1057 (8th Cir. 2000) (applying insurance case law to stop-loss insurance dispute); *United Food & Commercial Workers Tr. v. Pacyga*, 801 F.2d 1157, 653 (9th Cir. 1986); *Columbian Fin. Corp. v. Bus. Men's Assur. Co. of Am.*, 956 F.2d 277 (10th Cir. 1992) (analyzing a stop-loss policy); and *Glass v. United of Omaha Life Ins. Co.*, 33 F.3d 1341, 1344 (11th Cir. 1994) (referencing stop-loss policy as insurance and noting the policy reimbursed for payments over \$100,000).

certain triggers occur.²⁵ The key differences between a stop-loss insurance product and a traditional insurance product are the timing and the identity of the policy beneficiary. A stop-loss policy does not pay out until a certain dollar amount is reached or a certain number of claims are incurred, and stop-loss claims are payable to the self-funded plan, not to health care providers or covered employees.²⁶

IV. State Regulation of Stop-Loss Insurance

Prior to the Employee Retirement Income Security Act of 1974²⁷ (“ERISA”), the states regulated health insurance.²⁸ After ERISA, most self-funded plans are no longer regulated by the states.²⁹ However, “ERISA does not preempt state laws that regulate insurers that sell policies to employer plans, so long as the law is specifically

²⁵ NAIC White Paper, *supra* note 7, at 2. *See also* ALA. CODE § 27-1-2(1) (1975) (defining insurance as a “contract whereby one undertakes to indemnify another or pay or provide a specified amount or benefit upon determinable contingencies.”); FLA. STAT. § 624.02 (1959) (defining insurance as “a contract whereby one undertakes to indemnify another or pay or allow a specified amount or a determinable benefit upon determinable contingencies.”); GA. CODE ANN. § 33-1-2(4) (2019) (defining insurance as “a contract which is an integral part of a plan for distributing individual losses whereby one undertakes to indemnify another or to pay a specified amount or benefits upon determinable contingencies.”).

²⁶ NAIC White Paper, *supra* note 7, at 2.

²⁷ 29 U.S.C. §§ 1001, *et seq.*

²⁸ ERISA: BARRIER TO HEALTH CARE CONSUMERS’ RIGHTS, 3 Proc. of the Nat’l Ass’n of Ins. Comm’rs (1999), at 841.

²⁹ *See* 29 U.S.C. § 1144(b)(2)(B); *Metro. Life Ins. Co. v. Mass.*, 471 U.S. 724, 747 (1985).

directed at the insurance industry and [] regulates insurance practices.”³⁰ This means that state laws regulating stop-loss insurance are not preempted by ERISA, and states exercise the authority to regulate stop-loss insurance.³¹

The NAIC, with membership consisting of all the state regulators, recognized this authority and adopted the Stop Loss Insurance Model Act³² with the “inten[t] to prevent insurers selling stop loss insurance from circumventing state health insurance requirements protecting employers and consumers....”³³ And many states have adopted either the model or various other requirements impacting stop-loss insurance.³⁴ Further, the NAIC adopted the Prevention of Illegal Multiple Employer

³⁰ NAIC Edstrom Brief, *supra* note 5, at 6 (citing *Kentucky Ass’n of Health Plans v. Miller*, 528 U.S. 329, 334 (2003)).

³¹ See NAIC Edstrom Brief, *supra* note 5, at 7; TERRY HUMO, EMPLOYER’S GUIDE TO SELF-INSURING HEALTH BENEFITS, ¶ 743 (2007).

³² 1 Nat. Ass’n of Ins. Comm’rs’ Model Laws, Regulations and Guidelines, 92-1 to 92-2 (1995).

³³ NAIC Edstrom Brief, *supra* note 5, at 7.

³⁴ See ALASKA STAT. § 21.42.145 (2002); ARK. CODE ANN. § 23-62-111 (2009); CAL. INS. CODE §§ 10752 to 10752.8; COLO. REV. STAT. § 10-16-119 (2013); CONN. GEN. STAT. § 38a-8b (2004); DEL. CODE ANN. tit. 18, § 7218 (2011); D.C. CODE §§ 31-3821 to 31-3822 (2015); FLA. STAT. § 627.66997 (2015); LA. REV. STAT. ANN. § 22:883 (2011); 24-A ME. REV. STAT. § 707(1)(C-1); MD. CODE ANN. INS. § 15-129 (2008); MINN. STAT. §§ 60A.235 to 60A.236 (2009); NEB. REV. STAT. § 44-7609 (2002); N.H. REV. STAT. ANN. §§ 415-H:1 to 415-H:5 (2006); N.J. STAT. ANN. § 17B:27A-17 (1997); OHIO REV. CODE ANN. § 1739.12 (2015); OKLA. STAT. tit. 36, § 7401 (2016); OR. REV. STAT. § 742.065 (1995); 31 PA. CONS. STAT. §§ 89.471 to 89.474 (1992); R. I. GEN. LAWS §§ 27-8.2-1 to 27-8.2-5 (2013); S.D. CODIFIED LAWS §§ 58-18B-35 & 58-33-106 (2007); UTAH CODE ANN. §§ 31A-43-101 to 31A-43-304 (2013); WASH. REV. CODE ANN. § 48.21.015 (1992); KAN. ADMIN. REGS. 40-1-49 (2002); 02-031 CODE ME. RULES ch. 135; NEV. ADMIN. CODE § 689B.350 (2001);

Welfare Arrangements (MEWAs) and Other Illegal Health Insurers Model Regulation, which states that “stop loss policy coverage...is insurance.”³⁵

If stop-loss products were not insurance, then the states arguably would not have authority to regulate stop-loss products. This is troubling because of the potential for an increase in adverse selection, insufficient regulatory oversight, and priority for the insured during liquidation. The first concern if states did not regulate stop-loss products is that adverse selection would occur more frequently. Many ACA requirements do not apply to self-funded plans, creating different underwriting standards between fully-insured and self-funded plans.³⁶ This can create adverse selection—where a person “with a higher than average probability of loss seeks greater insurance coverage than those with less risk.”³⁷ Regulating stop-loss

N.D. ADMIN. CODE 45-06-14-13 (2017); UTAH ADMIN CODE r. 590-268 (2014); 4-5 VT. CODE R. § 15 (2018); Alaska Bulletin 2006-4 (2006); Ark. Bulletins 4-2007 & 6-2008 (2006/2008); Iowa Opinion No. 90-10-2 (1990); Kan. Bulletins 1993-12, 1993-12 (Addendum), & 1997-7 (1993/1997); N.J. Bulletin 2011-20 (2011); Okla. Bulletin LH 2013-03 (2013); Tenn. Bulletin 7-1-94 (1994).

³⁵ 2 Nat. Ass’n of Ins. Comm’rs’ Model Laws, Regulations and Guidelines, 220-1 to 220-18, at § 4(D)(1) (2007). *See also* Model Bulletin, REGULATORY ALERT TO STOP LOSS CARRIERS AND THIRD PARTY ADMINISTRATORS, 2 Proc. of the Nat’l Ass’n of Ins. Comm’rs 232, 234 (2003) (“Stop loss coverage is insurance....”).

³⁶ NAIC White Paper, *supra* note 7, at 1.

³⁷ Glossary of Insurance Terms, NAIC, https://content.naic.org/consumer_glossary#:~:text=Adverse%20Selection%20%20the%20social%20phenomenon,than%20those%20with%20less%20risk. (last visited Nov. 10, 2022). *See* NAIC White Paper, *supra* note 7, at 1.

insurance is one way to mitigate the adverse selection that occurs with self-funded plans.³⁸

The second concern is insufficient regulatory oversight. “The [Department of Labor] does not conduct any prior review of self-funded health plans for compliance before they commence operation.”³⁹ The lack of review of self-funded health plans means that employers can avoid appropriate underwriting. However, there is currently, and should continue to be, state regulatory oversight of stop-loss insurance. That means stop-loss insurance is subject to underwriting, which means the appropriate factors for rates will be examined in setting the stop-loss premium.⁴⁰ While the regulation of stop-loss insurance does not regulate self-funded plans,⁴¹ it does create some regulatory protection for the plans and employers that choose to purchase stop-loss insurance. State regulation of stop-loss insurance should continue so that appropriate underwriting occurs.

³⁸ See NAIC White Paper, *supra* note 7, at 1.

³⁹ *Id.* at 4.

⁴⁰ See *id.*

⁴¹ See *American Medical Sec., Inc. v. Bartlett*, 111F.3d 358, 361 (4th Cir. 1997) (“Accordingly, although plans that provide benefits in the form of insurance may be indirectly regulated through regulation of [stop-loss] insurance, []plans that are self-funded or self-insured may not themselves be regulated as insurance companies even if the self-funded or self-insured plan purchases stop-loss insurance to cover losses or benefits payments beyond a specified level.). See generally *Metro. Life Ins. Co.*, *supra* note 29 (distinguishing direct and indirect regulation).

The third concern is the need for “continued priority of stop loss insurance policyholders in insurance company liquidations and guarantee fund coverage.”⁴² Currently, stop-loss insurance is covered by most state guarantee funds.⁴³ But, if courts were to consider stop-loss policies to be something other than insurance, guarantee fund protection could be lost.

CONCLUSION

The NAIC said it best: “The NAIC reflects a consensus among its member states that stop loss coverage is insurance....”⁴⁴ Given the District Court’s ruling in this case appears to be based, in part, on the erroneous conclusion that self-funded plans do not purchase insurance from the Blues, this Court should consider the impact of the District Court’s decision and address it in this Court’s decision as well as any impact to the parties in this case.

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⁴² NAIC Edstrom Brief, *supra* note 5, at 4.

⁴³ *See id.* at 12.

⁴⁴ *Id.* at 17.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of FEDERAL RULE OF APPELLATE PROCEDURE 32(g). This brief contains 3476 words.

/s/ Kim Hunter

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, I electronically filed the forgoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellant CM/ECF system.

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